



Agenda Date: 8/18/04

Agenda Item: 2A

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

JERSEY CENTRAL
POWER & LIGHT

v.

JOANN LANE

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ENERGY

ORDER

DOCKET NO. EC04010040

Hoagland, Longo, Moran, Dunst & Doukas, LLP, by James B. Moran, on behalf of
Jersey Central Power and Light Company, a FirstEnergy Company

Ricky John, Principal Engineer, Division of Energy, on behalf of the Staff of the Board of
Public Utilities

BY THE BOARD:

By petition submitted on January 21, 2004, Jersey Central Power & Light Company ("JCP&L" or "the Company"), pursuant to the provisions of N.J.S.A. 48:3-17.6 et seq., requested that the Board of Public Utilities ("Board") authorize JCP&L to exercise the power of eminent domain with respect to a property known as 21 Applegate Street in Middletown, New Jersey.

After due notice to the owner of the subject property, the Board scheduled a hearing in this matter for June 1, 2004, at the Board's Newark offices. Rachel Boylan, the Board's duly appointed Hearing Examiner, served as the presiding officer. Appearances are noted above. Neither the owner of the subject property, Joann Lane, nor her legal representative appeared at the hearing. Likewise, no written submission has been filed with the Board by the property owner or a legal representative contesting the need for the taking of the property interest sought by the Company.

At the hearing, JCP&L relied on the testimony of Michael Filippone, the Director of Rates & Regulatory Affairs for FirstEnergy Service Company in New Jersey. Mr. Filippone testified as to the placement and function of the guy pole on the property. According to Mr. Filippone, the Company obtained verbal permission from Mr. Russell L. Tetley, the then owner of this property, to install guy pole JC 991 MDT and the associated guy wires on the property. This agreement was memorialized in an internal company document entitled "Filing Report Of Right-Of-Way Or Real Estate Documents" but was not recorded with the County of Monmouth. Mr. Tetley died on September 28, 1961, and on February 27, 1989, his widow, Grace Mae Tetley, conveyed the property located at 21 Applegate Street to respondent Joann Lane and her then husband Richard Lane. On August 7, 2000, respondent Joann Lane took sole possession of the property via deed from Richard Lane.

Mr. Filippone testified that, in or about March 2002, respondent Joann Lane contacted petitioner and requested that the guy pole and wires be removed from her property. JCP&L offered to relocate the guy pole and wires to a mutually agreeable location on respondent's property in exchange for a recorded Right of Way. Respondent rejected this offer and instead filed a Verified Complaint with the Monmouth County Superior Court seeking removal of the guy pole and wires and/or payment for their presence on her property. While this action was ongoing, on or about July 18, 2002, the Company, at the request of the respondent, raised the guy wires so that respondent could continue with the construction of an addition onto her home.

Mr. Filippone testified that while the deed between Ms. Tetley and the Lanes did not specifically mention the above-referenced right-of-way, the survey referenced in the deed does clearly indicate the presence of the guy pole on the property. He further testified, relying upon the engineering reports submitted with the petition and the certification of an engineer with personal knowledge of the location, that the guy pole supports a junction pole which has primary and secondary wires feeding three ways. The angle of the junction pole necessitates the guy pole's location on the property of 21 Applegate Street. If the guy pole were to be removed, according to the Company's witness, the junction pole would lean, which would eventually cause the wires to sag and pull away from the homes to which they are attached. As such, the Company claims that the guy pole and guy wires are reasonably necessary for the service of the public.

In support of its contention that the presence of the plant in question does not unduly prejudice respondent, the Company relies upon three facts: the guy pole and wires were on the property at the time of respondent's purchase; respondent did not voice complaints about the presence of the pole and wires until thirteen years after taking possession of the property; and there has been no interference with the use of the property as clearly indicated by JCP&L's raising of the guy wires at its own cost in July 2002 to facilitate the construction of the addition onto respondent's home.

While no submissions were made by the respondent in conjunction with the hearing in this matter, the respondent submitted an answer to JCP&L's initial petition in which she stated that she did not contest the public necessity aspect of this condemnation action.

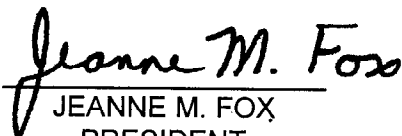
The exercise of the power of eminent domain by a utility company is controlled by N.J.S.A. 48:3-17.6 and -17.7 as well as N.J.S.A. 48:7-3.1, and comes into play when there is an inability between the Company and the property owner to reach agreement. In order to grant the requested exercise of eminent domain, the Company must show that, in addition to the inability to purchase the property at a mutually agreeable price, the property interest in question is reasonably necessary for the service, accommodation, convenience or safety of the public, and that the taking is not incompatible with the public interest and does not "unduly" injure the owners of the property. N.J.S.A. 48:3-17.7. Valuation, however, is not an issue to be addressed by the Board. N.J.S.A. 48:3-17.6 and 48:7-3.1. Rather, the issue must be considered in a subsequent proceeding before a court of competent jurisdiction.


After review of the entire record in this matter, including the credible testimony of Mr. Filippone, the Board HEREBY FINDS that the use of the subject property is reasonably necessary for the service, accommodation, convenience and safety of the public and that the taking of the necessary interest in such property is not incompatible with the public interest and would not unduly injure the owner of the property. Therefore, the Board, finding that the proposed exercise of the power of eminent domain is in accordance with law and is in the public interest, HEREBY ORDERS that Jersey Central Power & Light Company be and is HEREBY AUTHORIZED to exercise the power of eminent domain pursuant to N.J.S.A. 48:3-17.6 et seq. to acquire the necessary easements on and across the property known as 21 Applegate Street in Middletown, New Jersey.


The authority granted in this Order to exercise the power of eminent domain with respect to the lands of the respondent are declared to be null and void and have no affect whatsoever, unless the Company institutes proceedings under Title 20 of the revised Statutes of New Jersey, as amended and supplemented, to acquire the interest sought to be obtained through these proceedings, within one year from the date of this Order.

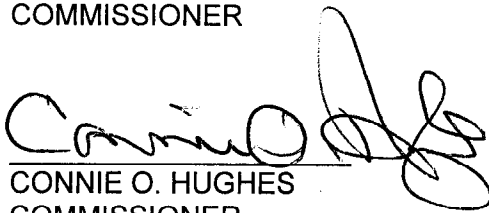
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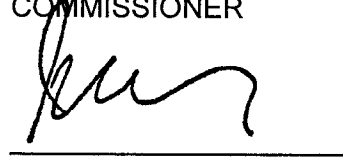
BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT

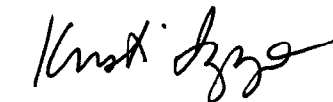

FREDERICK F. BUTLER
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CAROL J. MURPHY
COMMISSIONER


CONNIE O. HUGHES
COMMISSIONER


JACK ALTER
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

SERVICE LIST

| Joann Lane
21 Applegate Street
Red Bank, New Jersey
07701

James B. Moran, Esq.
Hoagland, Longo, Moran, Dunst & Doukas, LLP
40 Paterson Street
P.O. Box 480
New Brunswick, New Jersey 08903

Rachel Boylan, Legal Specialist
Board of Public Utilities
2 Gateway Center
Newark, New Jersey 07102

Kenneth J. Sheehan, DAG
Division of Law
124 Halsey Street
P.O. Box 45024
Newark, New Jersey 07101